

36.11.310 SITE-SPECIFIC ALTERNATIVE PRACTICES (1) The owner or operator shall comply with the management standards stated in 77-5-303(1), MCA, and this subchapter, unless approval has been obtained from the department for alternative practices designed for site-specific conditions encountered during a timber sale prior to conducting such practices.

(2) The department may approve a proposed alternative practice only if such practice would be otherwise lawful and the department determines with reasonable certainty that the proposed alternative practice would conserve the integrity of the streamside management zone and would not significantly diminish the function of the zone as stated in 77-5-301, MCA:

- (a) to act as an effective sediment filter to maintain water quality;
- (b) to provide shade to regulate stream temperature;
- (c) to support diverse and productive aquatic and terrestrial riparian habitats;
- (d) to protect stream channel and banks;
- (e) to provide large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and
- (f) to promote floodplain stability.

(3) In order to obtain department approval of alternative practices, the owner or operator shall submit to the department an application describing the proposed practices and location. Applications must provide all data specified by the department and must be submitted on forms provided or approved by the department.

(4) Within ten working days of receipt of the application for approval of alternative practices the department shall determine if the application is approved, approved with modification, disapproved, incomplete, requires additional information or environmental analysis, or requires a field review. The department shall notify the owner and the applicant of its decision in writing.

(5) If the department determines a field review is necessary, the field review must be made at a mutually agreeable time. The owner or his designee must be present at the field review.

(6) Within ten working days after all necessary field review is complete, the department shall determine whether the application is approved, approved with modification, disapproved, incomplete, or requires additional information or environmental analysis. The department shall notify the owner and the applicant of its decision in writing.

(7) The department may notify the applicant in writing that it declines to conduct further environmental analysis of an application if it determines that the proposed alternative practices are complex, or affect an environmentally sensitive area, or involve a high degree of uncertainty that the proposed alternative practices will have a significant impact on the quality of the human environment. The notice must briefly describe the department's reasons for declining to conduct further analysis. In this case, the applicant may conduct further environmental analysis and submit documentation to the department. The department shall independently review any further environmental analysis and documentation of the proposed alternative practices provided by the applicant and may adopt such documentation if it is adequate under the Montana Environmental Policy Act (75-1-101 et seq., MCA) and rules adopted thereunder (ARM 36.2.521 through 36.2.611). If so adopted, the department may utilize such

environmental documentation in further consideration of the application for alternative practices.

(8) In the event the department determines that an application for alternative practices may be of significant interest to the public, the time provided in this rule for considering such application may be extended in order to allow time for the public to be notified and participate in the department's decision pursuant to 2-3-101 et seq., MCA, and ARM 36.2.701 and 36.2.702 .

(9) Persons applying for approval of alternative practices shall agree in writing that approved alternative practices, including any additional conditions imposed by the department, shall have the same force and authority as the standards contained in 77-5-303, MCA, and shall be enforceable by the department under 77-5-305, MCA, to the same extent as such standards. Persons responsible for conducting alternative practices shall comply with all conditions of such practices. In determining whether to approve applications for alternative practices, the department may consider past violations of such standards or of the requirements of previously approved alternative practices by the applicant.

(10) Authorization to conduct alternative practices is valid for two years from the date of approval or for such period as may be specified by the department. (History: 77-5-303 and 77-5-307, MCA; IMP, 77-5-302 and 77-5-307, MCA; NEW, 1993 MAR p.14, Eff. 3/15/93; TRANS, 1995 MAR p. 1958, Eff. 7/1/95.)